

California Regional Water Quality Control Board
Santa Ana Region

September 26, 2001

ITEM: 25

SUBJECT: Executive Officer's Report

DISCUSSION:

1. **Coordination with the Counties Regarding Approvals of New Developments Using Septic Tanks** - At the July 20, 2001 Board meeting, the Board directed staff to meet with San Bernardino County Building and Environmental Health officials to discuss and clarify the minimum lot size requirements (MLSRs) and exemption criteria for new developments using on-site septic tank-subsurface leaching/percolation systems. This direction was prompted by situations in which the County issued building permits for developments that do not satisfy the MLSRs. The Regional Board was then placed in the inappropriate and uncomfortable position of considering requests for exemptions to the minimum lot size requirements by project applicants on the grounds that the applicants had made substantial progress on their projects in good faith, relying on County approval.
 - ◆ On August 13, 2001, Board staff (Joanne Schneider, Jun Martinez, Susan Beeson and Glenn Robertson) met with San Bernardino County representatives (Scott Maass of Environmental Health Services and Bob Murphy of the Building and Safety Department) to describe the problem and to discuss and clarify the MLSRs. Staff requested input on how we could best assist the County in implementing the MLSRs. The County representatives indicated that the matter is complicated by the fact that the County encompasses the jurisdiction of several Regional Boards, with disparate requirements pertaining to subsurface disposal systems. Moreover, building permits for projects within the Santa Ana Region can be issued by any one of several County offices, including offices outside of the Region. It is likely that County staff in offices outside of the Region are simply not aware of the Santa Ana Board's minimum lot size requirements.

It was agreed that training provided by Board staff would be helpful. It was also agreed that Board staff would develop a "Frequently Asked Questions" document to assist County staff in applying the MLSRs. We will also review the existing Memorandum of Understanding (MOU) between the Regional Board and County staff that pertains to

subsurface disposal system oversight to determine whether revisions are necessary. Board staff will solicit input from County staff on a draft "Frequently Asked Questions" document. Once it is prepared it will be distributed and posted on the Regional Board's web site.

- ◆ Similarly, on August 14, 2001, Board staff (Joanne Schneider, Jun Martinez, Susan Beeson, Glenn Robertson, Jawed Shami and Jane Qui) met with Riverside County representatives (Damian Meins, Sam Martinez, Don Park, Greg Dellenbach and Daryl Blanchard of Environmental Health Services) to discuss the MLSRs. Again, we requested input on how we staff could assist the County with implementation of the requirements. Riverside County staff agreed that a "Frequently Asked Questions" document would enhance the implementation of the MLSRs by County staff, as well as better inform the public. Board staff will also conduct training sessions with County staff on an as needed basis. Riverside County will revise their approvals form (SAN-007) to more accurately reflect the Board's MLSRs and what triggers a review by our office for septic system approval(s).
- ◆ Board staff will also be meeting with Orange County officials, in the near future, to discuss the MLSRs.

- 2. The Wetlands Recovery Project** - The Wetlands Recovery Project (WRP) was formed in 1997 when several State and Federal agencies signed a memorandum of understanding (MOU; also called a "working agreement") with the goal of developing and implementing a plan of regional priorities for the acquisition, restoration, and enhancement of southern California's coastal wetlands and watersheds. The WRP project area consists of the coastal watersheds of Orange, Los Angeles, San Diego, Ventura, and Santa Barbara counties. The WRP agencies include:

California Environmental
Protection Agency
State Water Resources
Control Board
Santa Ana, San Diego, Los
Angeles, and Central Coast
Regional Boards
The Resources Agency
Coastal Commission
Coastal Conservancy
Department of Fish and Game

Department of Parks and
Recreation
State Lands Commission
US Environmental Protection
Agency
US Army Corps of Engineers
US Fish and Wildlife Service
National Marine Fisheries
Service
Natural Resources
Conservation Service

The WRP organization is headed by a Board of Governors that is responsible for setting the policies that direct the activities of the Wetland Managers Group (WMG), the Public Advisory Committee, five County Task Forces, and the Science Advisory Panel. The Governing Board is comprised of the top officials from the 17 agencies, including Board Member Beswick. I am the designee to the WMG, and Jean Watt of Newport Beach chairs the Orange County Task Force. Coastal Conservancy staff manage the WRP fiscal and programmatic responsibilities, and the Coastal Conservancy Board approves the WRP grants and project expenditures.

The working agreement establishes the steps the WRP partner agencies take to foster the overall goal of the WRP, which is to augment the quantity and quality of the Southern California region's wetlands. Those steps include: the establishment of a 20-year functional vision and a rolling five-year regional restoration program; securing funding from the public and private sectors to implement the program; identification of agency-nonprofit project partnerships; and monitoring and reporting on WRP progress to meet the goals. At the May 18, 2001, Board of Governors meeting, the Board adopted the 2001-02 Work Plan, which lists 49 projects regionally, including 6 acquisition, restoration, or planning projects within the Orange County portion of the Santa Ana Region. The projects include the San Joaquin Marsh Enhancement Program at UC Irvine, Serrano Creek Stabilization/Restoration, 2 San Gabriel River projects, and 3-4 possible Huntington Beach wetland property acquisitions.

Currently, the WRP is developing the Regional Strategy, available in draft form through the WRP website (www.coastalconservancy.ca.gov/scwrp). The Strategy will specify WRP goals and priorities and incorporate the first 5-year Implementation Plan, the annual Work Plan, and a database of potential projects. The Strategy will be considered at the 2001 Southern California Wetlands Recovery Project Symposium/Board of Governors Meeting planned for November 29-30 in Orange County (location to be determined).

The Orange County Task Force met initially on January 31, 2001. The Task Force met again on August 23rd in response to a WRP request that the five counties discuss localized wetland issues and concerns. Several key ecological, organizational and data/research priorities were outlined during that meeting, and the results will be distributed to the Task Force for finalization. The County priorities will be incorporated into the Regional Strategy.

3. **Revision of State Board Enforcement Policy** – The State Board's current Water Quality Enforcement Policy was adopted in 1996. It is a brief document that describes general principles the Regional Boards should follow in their enforcement work. While it endorses statewide consistency, its general nature does little to achieve that end. The one specific requirement of the policy is that

Regional Board staff must report certain types of violations to the Regional Board, which we have done via a quarterly written report to the Board.

For some time, State Board staff has been working to develop a new Enforcement Policy. A draft of a new policy was distributed for public review late last year. In response to significant comments that were received, the State Board withdrew that draft and worked to revise it to respond to the comments. A revised draft was recently released for internal review (I provided you a copy of this draft under separate cover). This new draft policy is expected to be released for public comment in late September.

The new draft policy is much more detailed than the existing policy and contains more requirements that would promote statewide consistency among the Regional Boards. The draft policy includes provisions that would:

- ◆ Identify a list of "priority" violations that must be evaluated for possible enforcement action.
- ◆ Identify types of enforcement actions that may be used and discusses procedural issues associated with them.
- ◆ Describe specific recommended enforcement responses to certain more serious types of violations (e.g., falsification of reports, nonpayment of fees, and preventable spills that result in toxicity to wildlife or public health threats).
- ◆ Describe in some detail a general process for developing recommended administrative civil liability (ACL) assessments. This process is based on the factors defined in the Water Code that the Board is required to consider in setting these amounts. The policy states that the process is to be used by staff in developing a recommended assessment, but that the Board has discretion to reconsider the factors. The policy would require that ACL orders adopted by the Board specifically address these factors. The policy would also require that economic benefit be recovered in all ACL actions (which is currently required for most, but not all, ACLs).
- ◆ Identify criteria for appropriate supplemental environmental projects (SEPs). The policy supports SEPs, but would impose limits on how they are selected and managed. (The SEP procedures in the policy, however, are generally consistent with procedures we already use.)
- ◆ Limit the use of compliance projects (CPs) to situations where the avoided cost associated with the CP was specifically included as part of the ACL assessment.

- ◆ Require statewide standardization of periodic reporting of violations to the Regional Boards.

We believe that the fundamental issues that should be considered in reviewing this draft policy are its effect on our ability to effectively manage our resources and its effect on our enforcement discretion. Much of the draft policy is consistent with enforcement procedures that we already use. It would, in some cases, require minor adjustments in our practices. The policy's requirement to identify and evaluate "priority" violations would likely result in an increased emphasis on enforcement work with some associated reductions in other areas. The policy would also result in some loss of enforcement discretion (for example, in its limitations on the use of CPs). Staff would welcome any input the Board might have on the draft policy, and will forward the Board's comments to the State Board.

4. **Vila Borba Project, City of Chino Hills** – You will recall that petitions to the State Board for review and stay of the Regional Board's June 1, 2001 action regarding the Vila Borba project were filed by the Natural Resources Defense Council, Paulette Hawkins and other local residents. Those petitions remain pending with the State Board.

As you know, since June 1st and the filing of the petitions, much discussion and correspondence transpired between Board staff and the applicant, Mary Parente, and her consultants in our efforts to elicit the detailed information needed for us to take action on the certification application. Since the applicant failed to provide substantive information, and because it became evident that the applicant was pursuing behind-the-scenes approval from the Corps without the Regional Board's written certification, I denied the certification without prejudice on August 8, 2001. This action was taken on the advice of legal counsel and after reporting to the Board Chair.

We have just received a petition for State Board review of my August 8, 2001 denial. Attorneys (Musick, Peeler & Garrett LLP) for Ms. Parente filed the petition. A cursory review of the petition indicates that it has no merit. What is of concern to staff is that the petition relies on gross misrepresentations of facts to forward its arguments. This will require substantial staff time in preparing responses, if the State Board elects to accept the petition. It is noteworthy that while Ms. Parente has filed the petition, we earlier received assurances from her technical consultants that they have been directed to prepare the substantive information we have repeatedly requested. We do not know whether the filing of the petition will stay those technical efforts.

It is possible that the filing of this latest petition will prompt timely action on the petitions filed by NRDC, Ms. Hawkins, et al. We will keep you apprised of actions on the Vila Borba project.